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IN THE

Supreme Court of the United States

October Term, 1968

No. 521

DORRIS E. DREYFUS,

Petitioner,

vs.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, a not-for-profit corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

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No. __

DORRIS E. DREYFUS,

Petitioner,

vs.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, a not-for-profit corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on June 21, 1968.

CITATIONS TO OPINIONS BELOW

The memorandum and order, and the judgment order, of the United States District Court, Northern District of

Illinois, Eastern Division, (R.[1] 1-6) are unreported and are printed in Appendix C hereto. The opinion of the United States Court of Appeals for the Seventh Circuit, printed in Appendix A hereto, is reported in ___ F.2d ___ (7th Cir. 1968).

JURISDICTION

The judgment of the United States Court of Appeals was entered on June 21, 1968, Appendix A hereto. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

I

Whether the United States Court of Appeals denied petitioner her constitutional property rights by refusing to permit her to collaterally attack a void divorce decree modification order which divested her of a previously acquired lump sum property settlement incorporated in an Illinois divorce decree, where said void modification order was rendered in an *ex parte* proceeding where the court lacked both *in personam* and subject matter jurisdiction.

II

Whether the United States Court of Appeals has denied petitioner her Fourteenth Amendment right of due process

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[1] As used herein:
"R." refers to Appendix in the record.
"RS" refers to Supplemental Appendix in the record.
"App." refers to Appendix of Petition for Writ.

of law, where it refused to permit petitioner to collaterally attack a void *ex parte* contempt order that was entered against petitioner, a non-resident of Illinois, without personal or substituted service of process by the state court.

III

Whether the United States Court of Appeals has denied petitioner equal protection of the law as guaranteed by the Fourteenth Amendment, where it reached a result by interpreting the laws of Illinois in a manner directly contrary to the state legislative policy expressed by state statute and decisions of the highest court of the state.

STATEMENT OF THE CASE

On September 8, 1965, (RS 1-3) Michael Reese Hospital and Medical Center of Chicago (hereinafter referred to as "respondent") filed its complaint in the United States District Court for the Northern District of Illinois against Mutual Life Insurance Company of New York (hereinafter referred to as "Mutual") to recover the proceeds of three policies of life insurance (R. 11) upon the life of Philip S. Dreyfus, who died in 1961. Mutual, a resident of New York, was the issuer of the policies in dispute and had refused to pay the proceeds (R. 13, par. 7) thereof following the death of Philip S. Dreyfus to respondent, principally on the ground that claims against those proceeds had also been made by petitioner herein. The court's jurisdiction was initially based upon diversity of citizenship.

The policies in dispute were part of the assets of a trust valued at $355,000, known as Trust No. 33703 (R. 2, App.

C 1) of the First National Bank of Chicago, the donor of which was Philip S. Dreyfus.

By counterclaim, under the provisions of 28 U.S.C. 1335, Mutual interpled petitioner (a California resident) and respondent as adverse claimants to the proceeds of the policies ($51,461.90), paid said proceeds into court, and thereafter was dismissed from the action on August 4, 1966 (R. 2, App. C 1).

Both petitioner and respondent filed motions for summary judgment on their claims as to the proceeds of such policies (R. 40-47).

Respondent asserted its entitlement to the proceeds of the policies as a result of the exercise of a testamentary power of appointment over the assets of Trust No. 33703 in favor of respondent by Philip S. Dreyfus by Will dated November 10, 1958 (R. 9-10). All other assets of Trust No. 33703 were transferred by the trustee to respondent on April 27, 1964 (R. 31, par. 7).

Petitioner, the former wife of Philip S. Dreyfus,claimed that the proceeds of the policies, as well as all other assets of Trust No. 33703, were charged with and subject to unpaid child support in the sum of $60,090 (RS 5; R. 30, par 3) which had accrued under the terms of the 1955 final decree of divorce between petitioner and Philip S. Dreyfus, and to the unpaid balance of $10,000 plus interest of a lump sum property settlement in lieu of alimony, property rights and release of dower in connection with said divorce (RS 17(c); R. 22(c)). In addition, petitioner claimed the proceeds of the policies were subject to a lien for premiums paid upon said policies by petitioner from petitioner's personal funds over a twelve-year period prior to her divorce from Philip S.

Dreyfus (RS 10, par. 4). Finally, petitioner claimed that the proceeds of the policies were charged with her dower and other rights, which, because of the failure of Philip S. Dreyfus to honor the property settlement, remained in existence (RS 4, par. 1; R. 32).

The state court orders in dispute before Judge Campbell of the District Court arose from the following events:

A. On October 7, 1957, the divorce chancellor entered an order holding petitioner in contempt for an alleged failure to comply with the custodial provisions of the decree with respect to one of the couple's two minor children (RS 29-34; R. 41).

B. On November 18, 1958, the chancellor entered a further order, upon a subsequent petition filed by Philip S. Dreyfus on October 15, 1958, relieving Philip S. Dreyfus from making the final payment of $10,000 to petitioner, his former wife, due July 23, 1964 under the terms of the 1955 divorce decree, in view of her alleged continuing contempt of court (RS 23-27).

Respondent argued that these orders operated to bar petitioner's claims to the proceeds of said policies (R. 40-41).

Petitioner argued, on the other hand, that the orders were invalid and therefore subject to collateral attack on the following grounds:

(1) Under Illinois law, the Illinois court lacked the power to enter a valid order modifying the terms of the property settlement by which petitioner was entitled to receive accrued child support and an additional $10,000

(R. 45). Therefore, the orders purporting to extinguish petitioner's rights under the property settlement were null and void and without effect (R. 31).

(2) As a resident of California since January 1956, petitioner was not subject to the jurisdiction of the Illinois court over her person without first having received statutorily prescribed notice from the court or without voluntarily appearing before the court, in the absence of such notice (RS 29; R. 45). As to the proceedings related to the October 7, 1957 and the November 18, 1958 orders of the Illinois court, petitioner neither received statutorily prescribed notice from the court nor appeared (RS 29; R. 45). Accordingly, petitioner was not barred by those orders, or either of them, which were clearly void and without effect.

(3) Since the Illinois state court orders were invalid, they did not modify or extinguish petitioner's rights; and, accordingly, the failure of Philip S. Dreyfus to comply with the property settlement reinstituted petitioner's dower and other rights purportedly extinguished by the property settlement and final decree of divorce (R. 31; par. 2–prayer).

The United States District Court granted respondent's motion for summary judgment and denied petitioner's similar motion (App. C 6). The Court of Appeals for the Seventh Circuit affirmed the finding that the Illinois court had both personal and subject matter jurisdiction over petitioner and that, as a result, the District Court was not the proper forum to collaterally attack the subject orders (App. A hereto).

Petitioner timely filed on July 2, 1968 for a rehearing before the Court of Appeals for the Seventh Circuit, which petition was denied on July 8, 1968 (App. B hereto).

REASONS FOR GRANTING THE WRIT

I

The Illinois state court was totally without power by its order of November 18, 1958 to amend the 1955 divorce decree as it related to the rights of petitioner under the property settlement in lieu of alimony which was incorporated therein.

Accordingly, the United States Court of Appeals for the Seventh Circuit, holding in favor of the validity of the 1958 order of the Illinois court which purported to relieve petitioner of her rights to the remaining lump sum payment in lieu of alimony and to accrued child support, deprived petitioner of her property without due process of law, all in violation of the Fourteenth Amendment to the United States Constitution (App. E).

The court below found continuing subject matter jurisdiction in the Illinois court to modify the 1955 decree of divorce, citing (App. A 3) *De La Cour v. De La Cour,* 363 Ill. 545, 2 N.E.2d 896 (1936), and Illinois Revised Statutes 1967, Ch. 40, sec. 19 (App. D 3). The court's interpretation of the statute was clearly erroneous and in conflict with existing and controlling decisions of the Illinois courts. The court's reliance upon *De La Cour* was likewise erroneous, as that case, to the extent that it had any application to the instant case, was overruled by the 1947 amendment (App. D 3—Ill. Rev. Stats. Ch. 40, sec. 18) of the predecessor of section 19 of Chapter 40 of the Illinois Revised Statutes.

At the time of the decision in *De La Cour,* the 1933 version of section 19 of Chapter 40 of Illinois Revised

Statutes (App. D 2–Ill. Rev. Stats. Ch. 40, sec. 18) made no distinction in its continuing jurisdiction provisions between those divorce decrees with and those without incorporated lump sum property settlements in lieu of alimony. However, in 1947, the Illinois General Assembly substantially amended that section (App. D 3) to provide that where the decree of divorce "*recites that there has been* an express waiver of alimony or *a money or property settlement in lieu of alimony* . . ." the courts would be deprived of continuing jurisdiction to amend the decree. *Canaday v. Canaday*, 30 Ill.2d 440, 445, 197 N.E.2d 42 (1964); *Guest v. Guest*, 351 Ill.App. 148, 114 N.E.2d 326 (1953) [holding the only exception to be as to *prospective* child support monies]. Thus, by virtue of controlling decisions of the Illinois courts and the very language of the statute itself, the Illinois court lacked the power to modify the 1955 divorce decree in its purported orders of 1957 and 1958. The court below clearly erred in upholding the validity of those orders.

Moreover, the decision in the United States Court of Appeals is in direct conflict with the principles set forth in *In re Green*, 369 U.S. 689 (1962). Thus, petitioner need not obey orders where the court lacks subject matter jurisdiction, and she may collaterally attack such void orders in any subsequent lawsuit.

II

The 1957 and 1958 orders of the Illinois court were entered on insufficient notice and without personal jurisdiction over petitioner, and thus were void and of no effect. In refusing, nevertheless, to declare those orders invalid, the court below ignored the principles of due process of law

guaranteed to petitioner under the Fourteenth Amendment and settled in *Pennoyer v. Neff*, 95 U.S. 715 (1878).

As recognized by the court below (App. A 3), petitioner admits that prior to the entry of the 1957 and 1958 orders she received copies of the petitions for relief and related notices by mail in California where she had resided since January 1956. Petitioner has not, however, admitted the sufficiency of any such petitions or notices to place her before the Illinois court. Indeed, she has consistently maintained their insufficiency, and herein seeks to collaterally attack their validity, as authorized by this Court in *York v. Texas*, 137 U.S. 15 (1890).

During the pendency of the proceedings which resulted in the entry of the 1957 and 1958 orders, the only notices which petitioner received were from counsel for other parties. At no time, prior to the entry of such orders, did petitioner ever receive, by substituted service or otherwise, from the Illinois court, any notices whatsoever as required by Illinois Revised Statutes Ch. 110, section 14 (App. D 1).

As to the 1957 order, petitioner received by mail from the attorney for Philip S. Dreyfus a copy of a petition allegedly filed September 9, 1957, by which Philip S. Dreyfus sought an order of the Illinois court that petitioner, a nonresident of Illinois, return one of the two daughters of Philip S. Dreyfus and petitioner to Illinois, after she had run away. No summons, order to show cause or order for substituted service was issued upon said petition or served upon petitioner. On September 30, 1957, Philip S. Dreyfus caused a further petition to be filed, seeking to hold petitioner in contempt, and his attorney mailed a copy thereof to petitioner. Again, no summons, order to show cause or order for

substituted service was sent by the court to petitioner. Petitioner did not receive notice from the Illinois court, by way of process or otherwise, as required by Illinois Revised Statutes Chapter 110, sections 14 and 17 (App. D 1 and 2). Petitioner later learned that on October 7, 1957, the court had ordered her in contempt, fined her $50.00 per day, ordered that she forfeit a $10,000 bond, and suspended all child support provisions of the 1955 decree of divorce.

The procedure followed in connection with the 1958 order was even more unique. On October 2, 1958 (R. 25), Philip S. Dreyfus caused to be sent to petitioner a notice that on October 15, 1958 (R. 25) Philip S. Dreyfus would cause to be filed a further petition concerning petitioner's rights under the 1955 divorce decree. Apparently, the petition was thereafter filed, and by order dated November 18, 1958 (RS 23-27), the Illinois court purported to relieve Philip S. Dreyfus of his obligation under the property settlement provisions of the 1955 decree to pay to petitioner the lump sum of $10,000 due July 23, 1964. No summons, order to show cause, order for substituted service, or other paper or process was issued or served unon petitioner under the imprimatur of the Illinois court.

As to neither order did the Illinois court take action sufficient to gain personal jurisdiction over petitioner. It is settled that extra-official or casual notice, as was the situation respecting the 1957 and 1958 orders, is no substitute for the due process requirements of the law. *Coe v. Armour Fertilizer Works*, 237 U.S. 424 (1914). Moreover, the Illinois statute governing service on non-residents clearly contemplates both notice from the court and

service by publication, neither of which occurred as to either order. Ill. Rev. Stats. (1955) Ch. 110, section 14 (App. D 1). Service statutes have long been regarded as necessary of strict construction and compliance in order to avoid the injustices which occur in cases such as the one before this Court. See: *Mullane v. Central Hanover Bank and Trust,* 339 U.S. 306 (1950); *Anderson v. Anderson,* 292 Ill.App. 421, 11 N.E.2d 216 (1937). The consequence of insufficient notice is to fail to subject the party so deprived of notice to the personal jurisdiction of the court. *York v. Texas, supra.* And any order issued without jurisdiction is void. *In re Green, supra.*

The Illinois court lacked continuing jurisdiction to modify the 1955 property settlement decree in lieu of alimony, under section 19 of Chapter 40 of the Illinois Divorce Act (App. D 3). Any attempt to further adjudicate the parties' property rights would require the initiation of an original action, with the court obtaining personal jurisdiction over both parties. Without such jurisdiction, the modification is unenforceable and void. *Vanderbilt v. Vanderbilt,* 354 U.S. 416 (1956); *Armstrong v. Armstrong,* 350 U.S. 568 (1955); *Estin v. Estin,* 334 U.S. 541 (1947); and *Griffin v. Griffin,* 327 U.S. 220 (1945)

Accordingly, the court below deprived petitioner of her constitutional property rights without due process when it refused to permit a collateral attack on the void orders.

Finally, even if continuing jurisdiction were present as to any part of the subject matter of the 1957 contempt order, it was nevertheless void. Petitioner was not afforded sufficient time within which to prepare a defense and, thereby,

was deprived of due process. *Roller v. Holley*, 176 U.S. 398 (1899); *In re Oliver*, 33 U.S. 257, 275 (1957).

III

By failing to accord petitioner, a non-resident of Illinois, the same protections by way of adequate notice and proper application of the law as are accorded citizens of Illinois, by prior decisions of the courts, the Illinois courts have deprived petitioner of her guaranteed rights under the Fourteenth Amendment to equal protection of the laws.

IV

Petitioner intends to litigate the issue of dower and other rights conditionally waived in the 1955 divorce decree. The terms of that decree have not been honored by Philip S. Dreyfus or his estate. If the decision of the United States Court of Appeals is allowed to stand, petitioner may find herself barred in subsequent litigation from asserting the unfairness and invalidity of the 1957 and 1958 orders issued without sufficient notice, personal jurisdiction over petitioner or subject matter jurisdiction in the Illinois court.

CONCLUSION

Petitioner respectfully prays that the Writ of Certiorari petitioned for herein issue to review the decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

R. WICKS STEPHENS II
Attorney for Petitioner

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A Opinion of the United States Court of Appeals For The Seventh Circuit of June 21, 1968

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E United States Constitution

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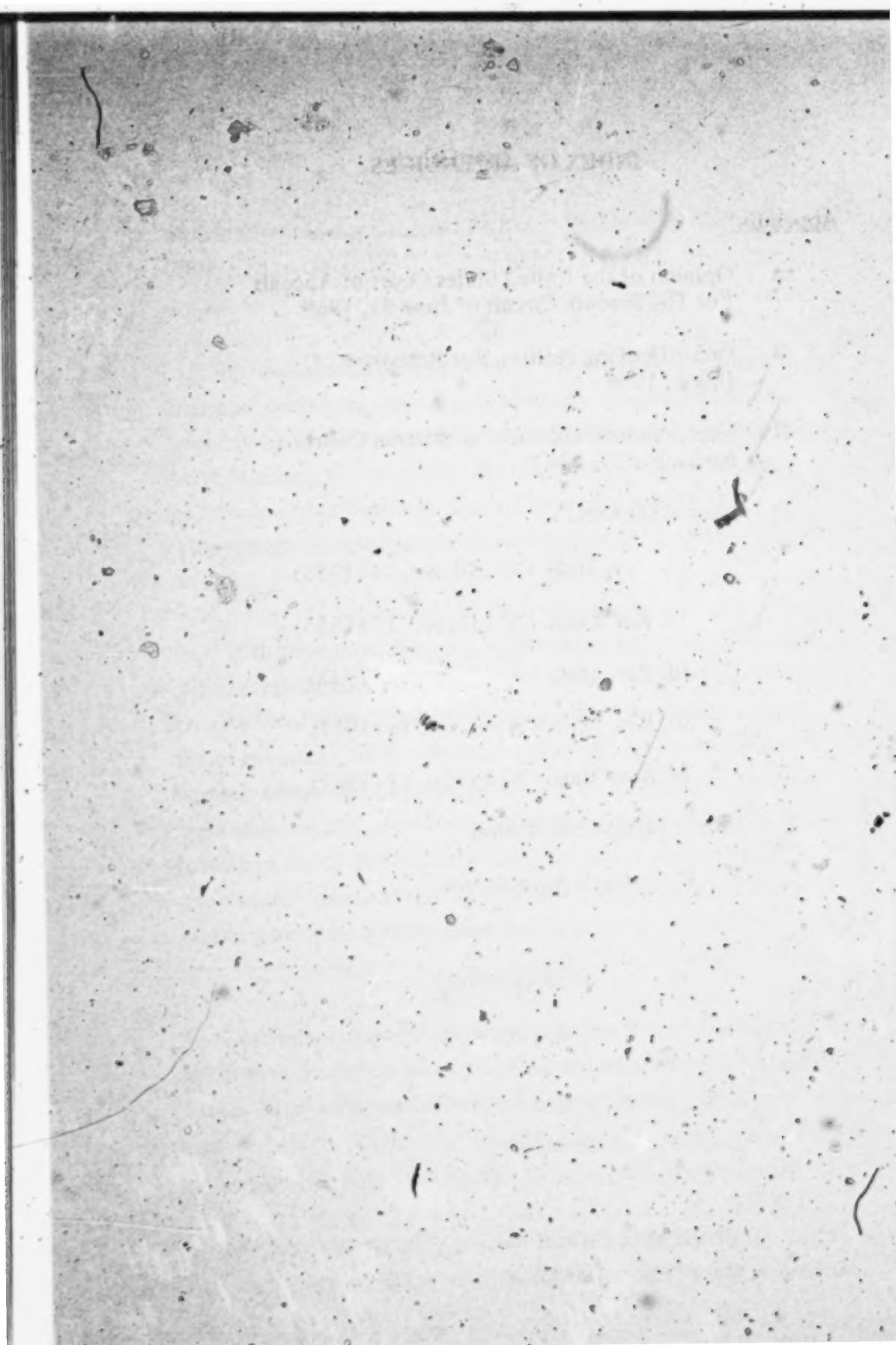

APPENDIX "A"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1967 APRIL SESSION, 1968

No. 16736

MICHAEL REESE HOSPITAL AND MEDICAL CENTER,
Plaintiff-Appellee,
v.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Defendant-Appellee,

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Counter-Plaintiff-Appellee,
v.
MICHAEL REESE HOSPITAL AND MEDICAL CENTER,
Counter-Defendant-Appellee,
DORRIS E. DREYFUS,
Counter-Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 21, 1968

Before Hastings, Fairchild and Cummings, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* Michael Reese Hospital and Medical Center of Chicago ("Michael Reese") filed this diver-

sity action, seeking payment of the proceeds of three insurance policies covering the life of Philip S. Dreyfus issued by defendant, Mutual Life Insurance Company of New York ("Mutual"). Dreyfus died in 1961. Mutual filed a counterclaim under the interpleader provisions of the Judicial Code (28 U.S.C. sec. 1335) asserting that the proceeds of these life insurance policies, plus interest, amounted to $51,461.90, and that both Michael Reese and Philip Dreyfus' divorced wife, Dorris E. Dreyfus, claimed said amount. The District Court thereupon made Mrs. Dreyfus a party to the suit and permitted Mutual to file a bond for $51,461.90 payable to the Clerk of the District Court. Michael Reese and Mrs. Dreyfus thereafter filed motions for summary judgment.

The beneficiaries of these policies were the trustees under a 1935 Trust Agreement providing that on Dreyfus' death, the principal should be divided and distributed as appointed by his will. Pursuant to his Last Will and Testament, Dreyfus left his two minor daughters $1,000 each and exercised the power of appointment over the substantial residue in favor of Michael Reese. The successor trustee subsequently assigned its interest in the policies to that institution.

The District Court held that Michael Reese was entitled to the proceeds of the life insurance policies and the interest thereon. We affirm the summary judgment in favor of the hospital.

Under paragraph 6 of the 1955 Illinois divorce decree between Mr. and Mrs. Dreyfus, Mrs. Dreyfus waived all rights in her former husband's property. In return she was to receive a $50,000 settlement. Forty thousand dollars was paid to her after the entry of the divorce decree, and the remaining $10,000 was to be paid on July 23, 1964.

On October 7, 1957, the divorce chancellor entered an order holding Mrs. Dreyfus in contempt for failure to comply with the custodial provisions of the decree with respect to the couple's two minor children. On November 18, 1958, the chancellor entered a further order relieving Dreyfus from making the final payment of $10,000 to his former wife in view of her continuing contempt of court. A provision modifying the 1935 Trust Agreement to provide such payment was expressly abrogated by that order.

Mrs. Dreyfus admits that prior to the entry of the 1957 and 1958 orders she received copies of the petitions for relief and related notices by mail in California where she resides. However, she contends that both orders were void because she was not served with a summons as well. Under the Illinois Divorce Act, the divorce court retained continuing power to modify the provisions of the 1955 decree, and no additional summons was required to be served on the parties. *De La Cour v. De La Cour,* 363 Ill. 545, 2 N.E.2d 896 (1936); see also Ill. Rev. Stats. 1967, Ch. 40, sec. 19. Since there was proper jurisdiction over the parties and subject matter, Mrs. Dreyfus is not entitled to subject the orders of the divorce court to collateral attack. *Hardy v. Bankers Life & Casualty Co.,* 232 F.2d 205, 209, 210-211 (7th Cir. 1956), certiorari denied, 351 U.S. 984. Accordingly, the fairness of the divorce decree and subsequent orders is not properly before us.

We have considered the other points raised by Mrs. Dreyfus but deem them not justiciable in this forum.

The judgment of the District Court is affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "B"

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

MONDAY, JULY 8, 1968

Before

Hon. JOHN S. HASTINGS, Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

Hon. WALTER J. CUMMINGS, Circuit Judge

MICHAEL REESE HOSPITAL and MEDICAL CENTER	)	
Plaintiff-Appellee	)	Appeal from the
v.	)	United States District
No. 16736	)	Court for the Northern
	)	District of Illinois,
DORRIS E. DREYFUS	)	Eastern Division.
Counter Defendant-Appellant	)	

IT IS ORDERED by the Court that the petition for rehearing filed in the above entitled cause be and the same is hereby denied.

APPENDIX "C"

MEMORANDUM AND ORDER

Entered November 22, 1967

UNITED STATES DISTRICT COURT

For The Northern District of Illinois

Eastern Division

This matter involves the disposition of the proceeds of three life insurance policies, insuring the life of Philip S. Dreyfus, now deceased. The policies were issued by Mutual Life Insurance Company of New York, who interpleaded adverse claimants, Michael Reese Hospital and Medical Center ("Michael Reese") and Dorris E. Dreyfus. Mutual Life was given leave to deposit the amount due under the policies, plus interest, with the Clerk of this Court and was released from further obligation under the policies and dismissed from this proceeding. (Order Aug. 4, 1966). Michael Reese claims to be the beneficiary of the policies through a power of appointment exercised by the deceased in his Will. (1. The named beneficiaries of the policies were Philip Dreyfus and the First National Bank of Chicago, as trustee under trust No. 33703. The trust agreement (No. 33703) provided that it should be distributed as Philip Dreyfus should appoint by Will, in paragraph 4 of his will, Philip Dreyfus expressly exercised all his powers of appointment in favor of Michael Reese Hospital.) Claimant, Dorris Dreyfus, is the former wife of the decedent. She challenges the ability of Michael Reese to comply with the terms of the gift, arguing that the gift is specifically for research purposes and Michael Reese is not a research corporation or institution. She also claims the proceeds of the policies by virtue of her dower rights and her right to payments for

child support. She further claims an interest because of certain premiums allegedly paid by her and because of alleged interests she had in property deeded into the trust in question (No. 33703). Claimant, Michael Reese, argues, *inter alia*, that all of these questions have been resolved by the divorce decree and property settlement agreement and further orders entered by the Superior Court of Cook County. Claimant, Dorris Dreyfus, challenges the validity of the proceedings in the state court. Both parties have moved for summary judgment.

Claimant Dreyfus has also filed a motion to transfer this action to the United States District Court, Southern District of California, Central Division.

As to the motion to transfer, the court finds that, even assuming that the action could properly be brought in that district, such a transfer would not serve the convenience of the parties and witnesses and the interests of justice and accordingly the motion to transfer is denied. (28 U.S.C. Sec. 1404(a))

Michael Reese has attached a copy of its charter to its motion for summary judgment. (Ex. A). Claimant Dreyfus argues that the charter establishes that Michael Reese is a general charity and hospital and not a research organization and that it does not have power to receive money for research purposes. A resolution of this question requires only an interpretation of the hospital's charter. On analysis of the charter, I cannot agree with the contention of claimant Dreyfus. The purpose of the hospital is to cure and prevent sickness and disease–medical research is an intrinsic part of this purpose. The Michael Reese Charter, page 12, provides:

"The object of this corporation is to assist and aid

> the sick, injured and convalescent; to prevent and cure disease, want and suffering; . . . to maintain and conduct hospitals, . . . to hold and dispose of property, both real and personal, for the same or any of the same; . . . and to do and perform whatever act or thing may be necessary, proper or convenient to carry out the aforesaid purposes, or any of the same, both for the benefit of the Jewish and of other sufferers."

This charter clearly anticipates and includes the power to receive gifts to be used for medical research.

As to claimant's right to take dower and her other claims against the estate of her former husband and her claims to Trust No. 33703, I refer to the divorce decree (Ex. A to answer of Michael Reese filed herein) and further orders of the state court in that proceeding (Order of November 18, 1958, Ex. C to Answer of Michael Reese and Order of October 7, 1957, Ex. B to Motion of Michael Reese for summary judgment).

Under the divorce decree (paragraph 6), all claimant's rights of dower are forever relinquished, released, barred, terminated and ended. I further note that the decree states that claimant wilfully deserted and absented herself from her now deceased husband. Under Illinois law the dower rights of the party at fault are terminated. (Ill. Rev. Stat. C. 3 Par. 21)

The decree and property settlement agreement considered and approved by the state court also provide:

> "That the inchoate or other right of dower, homestead, claim or title, contingent, reversionary or otherwise, and any right of courtesy and descent, and all other rights and claims of each party in and to

the property of the other party, real, personal or mixed, shall be and the same are hereby forever relinquished, released, barred, terminated and ended, and that during their respective lifetimes each of the parties hereto may deal with his or her separate estates as if the said parties hereto had never been married to each other and upon the death of either of them, the property, real, personal or mixed, then owned by him or her shall pass by his or her will, or under the laws of descent (as the case may be), free from any rights, statutory or otherwise, inheritance, dower, title or claim of the other party, and as if the parties hereto had never been married to each other; that neither the plaintiff nor the defendant herein shall at any time hereafter sue the other of them, or his or her (as the case may be), heirs, executors, administrators or assigns for the purpose of enforcing any or either of the rights specified in and relinquished, waived, discharged, released, barred and terminated hereunder.

"That all the rights, claims and demands of every kind, nature and description, which each party has or may hereafter have, or claim to have against the other, including all liabilities now or at any time hereafter existing or accruing on account of support, maintenance, alimony, temporary or permanent, attorneys' fees, dower, or rights in lieu thereof, incident to the marriage relationship existing between the parties hereto, shall be and the same are hereby forever discharged, extinguished, released and ended; and that all matters and charges whatso-

soever, and all manner of actions or causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever, in law or in equity, which each party ever had, now has, or which he or she, his or her heirs, executors, administrators or assigns, or any of them, hereafter can, shall or may have against the other (as the case may be), for or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date hereof, shall be and the same are hereby forever released, discharged, barred, terminated and extinguished." (Decree, Par. 6 and 7 at pp. 24-26)

The divorce decree did provide for payment of $10,000 to claimant from trust No. 33703, payment to have been made July 23, 1964, but the further order of that court, dated November 18, 1958, provided that Philip Dreyfus was discharged from any obligation to make payment of $10,000 from trust No. 33703 to claimant because of her conduct which was found to be willful and contemptuous of the orders and decrees of that court. The provisions establishing her rights to said sum from that trust were found to be null and void. (Par. 6 Ex. C to Michael Reese answer)

As to her claims for child support, a further decree of the state court, entered October 7, 1957 provides:

"Philip S. Dreyfus is hereby relieved, released, and discharged from any obligation to make any payments to the defendant Dorris R. Dreyfus for the support of PHYLLIS and DIANE, until the further order of this court." (Ex. B to Michael Reese motion for summary judgment, par. 4)

The divorce decree and the above cited orders of the state court clearly bar, as a matter of law, any right, claim or interest claimant, Dorris R. Dreyfus, may have had in the proceeds of the trust or the policies here in question. This is not the proper forum to challenge the decrees or orders of the state court.

For the reasons hereinabove set forth, the motion of Michael Reese for summary judgment is granted and the motion of Dorris R. Dreyfus for summary judgment is denied and her claim is dismissed.

* * *

APPENDIX "D"
ILLINOIS STATUTES

Ill. Rev. Stats. Ch. 110, Sec. 14 (1955)

Whenever in any action affecting property or status within the jurisdiction of the court including an action . . . to revive a judgment or decree plaintiff or his attorney shall file at the office of the clerk of the court in which his action is pending, an affidavit showing that the defendant resides or has gone out of this state . . ., that process cannot be served upon him, and stating the place of residence of the defendant, if known, or that upon diligent inquiry the place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending . . . the publication shall contain notice of the pendency of the action, the title of the court, the title of the case, showing the names of the first named plaintiff and the first named defendant, the number of the case, the names of the parties to be served by publication, and the date on or after which default may be entered against him. The clerk shall also, within 10 days of the first publication of the notice, send a copy thereof by mail, addressed to each defendant whose place of residence is stated in such affidavit. The certificate of the clerk that he has sent the copy in pursuance of this section is evidence that he has done so.

Ill. Rev. Stats. Ch. 110, Sec. 17 (1955) Act Submitting To Jurisdiction—Process.

(1) Any person, whether or not a citizen or resident of this state, who in person or . . . does any of the acts hereinafter enumerated, thereby submits such person . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any such acts; . . .

(e) with respect to actions of divorce and separate maintenance the maintenance in this state of a matrimonial domicile at the time the cause of action arose or the commission in this state of any act giving rise to the cause of action.

(2) Service of Process upon any person who is subject to the jurisdiction may be made by personally serving the summons upon the defendant outside the state.

. . .

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

Ill. Rev. Stats. Ch. 40, Sec. 18 (1933)

When a divorce shall be decreed, the court may make such order touching the alimony and maintenance of the wife or husband the case, custody and support of the children, or any of them as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; and order the defendant to give reasonable security for such alimony and maintenance or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practices of the court, where a party wilfully refuses to comply with the court's order to pay alimony and maintenance *provided* that no alimony or separate maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order, *and provided further* that a party shall not be entitled to alimony and maintenance after remarriage. And the court may on application from time to time make such alterations in the allowance of alimony and maintenance, and the care, custody and support of the children, as shall appear reasonable and proper.

Ill. Rev. Stats. Ch. 40, Sec. 18 (Amended July 9, 1947) S.B. No. 417 which added the following words* after "just"; in the first sentence of the 1933 statute:

Irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support, it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse and care of the children as, from the evidence and nature of the case, shall be fit, reasonable and just, **but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in lieu of alimony or where the court by its decree has denied alimony.* (Emphasis added.)

Ill. Rev. Stats. Ch. 40, Sec. 19 (1967) Permanent Alimony - Custody And Support Of Children - Modification Of Decree - Enforcement

. . . Irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support, it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse . . . *but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in lieu of alimony or where the court by its decree has denied alimony* . . . (Emphasis added.)

APPENDIX "E"

UNITED STATES CONSTITUTION

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 1541 Wilshire Boulevard, Suite 107, Los Angeles, California 90017, that on SEPTEMBER , 1968, I served the within PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT on the following named parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the address as follows:

FRANK D. MAYER, GEORGE V. BOBRINSKOY, JR.
231 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60604

Attorneys for Michael Reese Hospital

I swear under penalty of perjury that the foregoing is true and correct.

Executed on SPETEMBER , 1968, at LOS ANGELES, CALIFORNIA.

_____

R. WICKS STEPHENS II

SUBSCRIBED AND SWORN TO BEFORE ME

THIS DAY OF SEPTEMBER, 1968.

_____

NOTARY PUBLIC IN AND FOR THE

STATE OF CALIFORNIA.